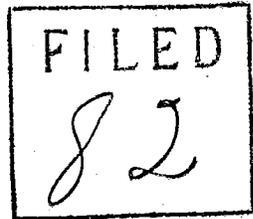


CORPORATIONS: Products of foreign corporations may be subject to state inspection laws although sold in interstate commerce.



December 6, 1945

17/18

Honorable Sam B. Shirky
Associate Dean
University of Missouri
Columbia, Missouri

Dear Sir:

We are in receipt of your request under date of November 24, 1945, in which you seek the opinion of this office on a question presented to you in an enclosure to your letter written by a corporation licensed to do business in another state. That letter is as follows:

"We are in receipt of your bulletin on the Missouri Law relating to the sale of commercial fertilizers and we are in doubt as to its interpretation of the law as it pertains to us.

"We contemplate marketing a fertilizer of 4-12-4 formula under our own brand name, direct to the consumer, which will be the cemeteries in the State of Missouri.

"We have recently received information from other States that since we are marketing direct to the consumer, it will be unnecessary for us to obtain a license to market in those states, under these conditions. However, we must file with their state the type of product and the manner in which we intend to market. Since this is true, in some of the other States, we are wondering as to whether or not this same thing applies in the State of Missouri. We would appreciate clarification on this subject."

The law referred to in the above request is Article 14, Chapter 102, R. S. Mo. 1939. The pertinent sections of that article are as follows:

Sec. 14251. "Any commercial fertilizer or material to be used as a fertilizer, the selling price of which exceeds five dollars per ton, shall have stamped or affixed to each package of such fertilizer, in a conspicuous place on the outside thereof, by the manufacturer, importer, corporation, company or person who sells or causes the same to be sold, offered or exposed for sale, a plainly printed statement which shall certify as follows:

"(1) The name, brand or trade-mark under which the fertilizer is sold.

"(2) The name or address of the manufacturer of the fertilizer.

"(3) The guaranteed chemical composition of the fertilizer expressed in the following terms: (a) Per centum of nitrogen; (b) per centum of available phosphoric acid, and in the case of an undissolved animal bone, the per centum of insoluble phosphoric acid; (c) per centum of potash soluble in distilled water. In case the composition is expressed in equivalent ammonia, etc., in addition to the above, it shall be clearly and unequivocally shown that such terms are used merely as equivalents and not used to represent additional plant food."

Sec. 14252. "Before any commercial fertilizer or material to be used as a fertilizer, the selling price of which exceeds five dollars per ton, is sold, offered or exposed for sale in this state, the manufacturer, importer, corporation, company or person who sells or causes the same to be sold, offered or exposed for sale, shall file annually for registry with the Missouri agricultural experiment station at

Columbia, a statement which shall certify as follows:

"(1) The name, brand, or trade-mark under which the fertilizer is sold;

"(2) the name and address of the manufacturer of the fertilizer;

"(3) the guaranteed chemical composition of the fertilizer, expressed in the following terms: (a) Per centum of nitrogen; (b) per centum of available phosphoric acid, and in the case of an undissolved bone, the per centum of insoluble phosphoric acid; (c) per centum of potash soluble in distilled water."

Sec. 14255. "Every manufacturer, importer or person shall pay to said experiment station for the labels or tags required by them under section 14254 of this article, the sum of one-half cent each for tags or labels to be attached to packages weighing ten pounds or less; the sum of one cent for tags or labels to be attached to bags or packages weighing more than ten pounds and not more than fifty pounds; the sum of one and one-half cents for tags or labels to be attached to bags or packages weighing more than fifty pounds and not more than one hundred pounds; and three cents each for tags or labels to be attached to bags or packages weighing more than one hundred pounds and not more than two hundred pounds, and when fertilizers are shipped in bulk there shall be attached one tag costing three cents for each two hundred pounds thereof. The money so paid shall be used for defraying the expenses of said experiment station in registering and keeping a registry of the statements required under section 14252 of this article, for collecting samples in the open market, for making or causing to be made the analysis of samples for supplying the labels or tags, for practical and scientific experiments in the value and proper use of commercial fertilizers, and for publishing the

results of same and for such other work, investigations and publications as may be of practical use to the farmers of the state."

Sections 14256 and 14257 require the director of the agricultural experiment station to cause to be collected from the open market samples of all brands of fertilizer sold in the state during the year, and to cause to be made a chemical analysis of such samples.

Section 14258 prohibits the sale of certain types of fertilizer unless a plainly printed statement of such fact be affixed to every such package.

Section 14259 makes a violation of any of the provisions of the article a misdemeanor.

The corporation forwarding the request apparently doubted the application of this law to their product on the ground that, since it was being sent from outside the state to a consumer within this state, it was a transaction in interstate commerce, and for that reason exempt from legislation enacted by this state.

The provision of the Constitution of the United States which might bear on the question at hand is clause 3 of Section 8 of Article I, which provides:

"The Congress shall have power: * * *

"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes; * * * "

While the above section does constitute a grant of power to the Federal Government to control commerce between the states, the courts have continuously recognized the rule that the states retained as a part of their general police powers the right to protect the health, safety and morals of the citizens of the states. By the enactment of nondiscriminatory laws which have as their object such protection, such laws are valid, even though they may incidentally constitute a burden on interstate commerce, if fraud or imposition are prevented thereby.

A law very similar to the Missouri law set out above was involved in *Patapasco Guano Co. v. Board of Agriculture of North Carolina*, 42 L. Ed. 191, 171 U. S. 345, a decision by the United States Supreme Court. In that case a statute of North Carolina required that every bag, barrel or other package of fertilizer offered for sale must have affixed thereto a label or stamp setting forth the name, location and trademark of the manufacturer, the chemical composition of the contents, and the real percentage of certain specified ingredients. A further provision required an agricultural experiment station connected with the University of North Carolina to employ a skilled chemical analyst whose duty it was to obtain samples and analyze samples of commercial fertilizer obtained on the open market. Further provision required the manufacturers of such products to pay a charge of twenty-five cents per ton on such fertilizers for each fiscal year, and penalties were provided for noncompliance with the act. It can readily be seen that these statutes were almost identical with our own, even as to the charge for inspection.

The law was attacked on the ground that it violated the third clause of Section 8 of Article I, *supra*, that the charge to be paid was so excessive that it could not be sustained as a legitimate inspection law or as a valid exercise of the police power, and because it did not relate to the health, morals or safety of the community. In rejecting these claims, the opinion stated, 1. c. 195, 196 (L. Ed.):

"Inspection laws are not in themselves regulations of commerce, and while their object frequently is to improve the quality of articles produced by the labor of a country and fit them for exportation, yet they are quite as often aimed at fitting them, or determining their fitness, for domestic use, and in so doing protecting the citizen from fraud. Necessarily, in the latter aspect, such laws are applicable to articles imported into, as well as to articles produced within, a state.

* * * * *

"Whenever inspection laws act on the subject before it becomes an article of commerce they are confessedly valid, and also when, although operating on articles brought from one state

into another, they provide for inspection in the exercise of that power of self-protection commonly called the police power.

"No doubt can be entertained of this where the inspection is manifestly intended, and calculated in good faith, to protect the public health, the public morals, or the public safety. *Minnesota v. Barber*, 136 U. S. 313, (34:455, 5 Inters. Com. Rep. 185). And it has now been determined that this is so, if the object of the inspection is the prevention of imposition on the public generally.

* * * * *

"Where the subject is of wide importance to the community, the consequences of fraudulent practices generally injurious, and the suppression of such frauds matter of public concern, it is within the protective power of the state to intervene. Laws providing for the inspection and grading of flour, the inspection and regulation of weights and measures, the weighing of coal on public scales, and the like, are all competent exercises of that power, and it is not perceived why the prevention of deception in the adulteration of fertilizers does not fall within its scope.

* * * * *

"The act of January 21, 1891, must be regarded, then, as an act providing for the inspection of fertilizers and fertilizing materials in order to prevent the practice of imposition on the people of the state, and the charge of 25 cents per ton as intended merely to defray the cost of such inspection. It being competent for the state to pass laws of this character, does the requirement of inspection and payment of its cost bring the act into collision with the commercial power vested in Congress? Clearly this cannot be so as to foreign commerce, for clause two of section 10

of article 1 expressly recognizes the validity of state inspection laws, and allows the collection of the amounts necessary for their execution; and we think the same principle must apply to interstate commerce. In any view, the effect on that commerce is indirect and incidental, and 'the Constitution of the United States does not secure to anyone the privilege of defrauding the public.'"

There are many other decisions to the same effect cited in the above case. In *Savage v. Jones*, 56 L. Ed. 1183, 225 U. S. 501, a law enacted by the State of Indiana, very similar to the Missouri fertilizer law, but applying to commercial livestock feed, was under attack because of a supposed conflict with the Federal Constitution as it related to interstate commerce. In sustaining the validity of the act, the court said, l. c. 1191 (L. Ed.):

"The evident purpose of the statute is to prevent fraud and imposition in the sale of food for domestic animals,--a matter of great importance to the people of the state. Its requirements were directed to that end, and they were not unreasonable. It was not aimed at interstate commerce, but, without discrimination, sought to promote fair dealing in the described articles of food. The practice of selling feeding stuffs under general descriptions gave opportunity for abuses which the legislature of Indiana determined to correct, and to safeguard against deception it required a disclosure of the ingredients contained in the composition. * * * *

" * * * But when the local police regulation has real relation to the suitable protection of the people of the state, and is reasonable in its requirements, it is not invalid because it may incidentally affect interstate commerce, provided it does not conflict with legislation enacted by Congress pursuant to its constitutional authority. * * * "

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The latter case intimates that legislation by Congress concerning the interstate shipment and sales of fertilizer might affect the validity of state laws on the same subject, and it is mentioned for that reason. A search of federal legislation fails to disclose any such enactment, although legislation has been passed on a variety of other products.

CONCLUSION

In view of the above authorities, it is our opinion that commercial fertilizer manufactured outside the State of Missouri and sold within the state is subject to the provisions of Article 14, Chapter 102, R. S. Mo. 1939, even though such sales are made and the products delivered in interstate commerce.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

RLH:HR